

Minutes Small Business Environmental Council

July 25, 2013 DNR Waukesha Office, Room 338 141 NW Barstow Street, Waukesha, WI 53188 9:00 am – 12:00 pm

Members Present: Al Shea, Amy Litscher, Richard Klinke, Shane Lauterbach, Rep. André Jacque (phone)

Absent: Jeanne Whitish, Vince Ruffolo

DNR Staff: Kimberly Ake, Lisa Ashenbrenner

Guests: Kristin Hart, Steve Elmore, Erin Crain

Agenda Repair – Al Shea

Al began the meeting at 9:00. There were no changes to the agenda.

Review of Rule Evaluation Process – Al Shea

This was the first meeting implementing the council's new approach of evaluating proposed rules for small business impacts. The goal is to give the council more opportunity to get involved early in the rulemaking process. The rules that were examined for this meeting were at varying stages of the process; however, going forward the rules sent to the council will be limited to those in the scope statement phase.

Al gave a brief summary of the rulemaking process. DNR is required to develop a scope statement outlining the proposed rule or rule change which is posted on a statewide website. The scope statement goes to the Natural Resources Board (NRB) and then to the governor for approval. DNR usually creates an advisory group to come up with a draft rule. The draft goes back to the NRB and then goes out for public hearings. Comments from the hearings go back to the advisory group which may make changes based on input. Then the rule is sent back to the NRB for adoption. Additional public comments are taken at the NRB meeting. If the NRB adopts the rule, it goes to the legislature which decides whether or not to act on the rule. There are additional opportunities for input during the legislative process as well.

Al reminded the council of the criteria decided on for evaluating a rule's small business impact. The criteria are as follows:

- 1. What is the cost of implementation? This includes the time spent on monitoring, recordkeeping and reporting in addition to the financial burden of changing or adding equipment or raw materials.
- 2. How easy is the rule to understand? Are outside experts needed?

- 3. Does the rule overlap with other regulations, including those of other agencies?
- 4. Were affected industry or trade associations consulted? (This will be no at the scope statement stage.)
- 5. Will businesses that were previously unaffected by regulations become affected? How will the newly affected sources be notified?
- 6. What alternatives are available to small businesses to avoid being regulated? Were the possible alternatives considered?

<u>Construction and Operation Permit Program Requirements (AM-24-12) Overview –</u> Kristin Hart

Kristin presented an overview of AM-24-12 and provided handouts of the rule summary and the scope statement.

Kristin began by introducing herself. She has worked with a lot of small businesses as the Registration Operation Permit Coordinator and is now taking the lead on the AM-24-12 rule changes. The goal of this rule change is to make permitting easier and less costly while still complying with the Clean Air Act. She is gathering ideas from businesses on how to streamline the permitting process.

Kristin went over the rule summary handout, provided below:

Air Permit Streamlining Rule AM-24-12

Summary

The primary objective of this rule is to improve operational efficiency and simplify the Air Pollution Permitting processes administered under chs. NR 406 and 407, Wis. Adm. Code, while remaining consistent with the Federal Clean Air Act.

Very Flexible Scope Statement – Intention is to use stakeholder groups both internal and external to DNR to determine what should be included in the final rule.

Ch. NR 406 - Construction Permit Changes	Ch. NR 407 - Operation Permit Changes
Defining terms	Defining terms
*Reconstruction	Aligning state definitions with federal
*Shutdown	definitions
*Cause or Exacerbate	Clean up old language
Aligning state definitions with federal	Correct errors or omission
definitions	*Examine exemption for "Natural Minor"
Clean up old language	sources
Correct errors or omission	Simplify and expand usability of Minor
*Create an Administrative Revision Process	Revision Process
Expand existing exemptions	*Expand Registration Permit Program
Create new exemptions	Make operation permits for minor sources

Examine Construction Permit Waiver to remove	non-expiring
requirement for "undue" hardship."	Expand existing exemptions
Other – Want your ideas	Create new exemptions
	Other – Want your ideas

^{*}Specifically required by rule

Timing

8/22 – Presentation of the Rule to the Air Management Study Group

September-November: Stakeholder Group Formation
Meetings with Stakeholder groups

December – Presentation of proposed Draft Rule Language to Air Management Study Group

Final Rule – late 2015

SIP Approval – late 2016

Contacts

Rules Website: http://dnr.wi.gov/news/input/ProposedPermanent.html

Construction Permit Changes - Steve Dunn (608)267-0566 steven.dunn@wisconson.gov

Operation Permit Changes - Barb Pavliscak (608)935-1927 barbara.pavliscak@wisconsin.gov

Rule Package Coordinator - Kristin Hart – (608)266-6876 kristin.hart@wisconsin.gov

Kristin explained that some terms are not currently defined in the existing rule. Shane asked if the undefined terms were used elsewhere. Kristin explained that, even if a term is defined in one chapter of the NR Code, it should be defined in other code chapters where it is used. Definitions of the same term can vary from chapter to chapter. She also noted that sometimes the state and federal rules define terms differently. For example, the term "emergency generator" means something different to EPA and DNR. Aligning these definitions will eliminate confusion.

An overview of the rule will be presented to the Air Management Study Group. Their second meeting will be August 22. Al noted that the group was modeled after a group working on brownfields. These groups are designed to give advice on program improvements. Al asked if there were small business representative on the study group. Kristin believes that they do have someone from small business. Amy asked if a lot of industries would be represented. Kristin said they are trying to get a wide representation of groups. The draft rule language will be presented to the Air Management Study Group in December. Kristin pointed out that the rulemaking is on a fast track, because it has been requested by the legislature. Once the final rule is passed, federal approval will be required to add it to the State Implementation Plan (SIP). This will take an additional year.

Kristin encouraged council members to participate in the rulemaking. Any ideas should be sent to the above listed contacts. Some things for council members to think about are how permits can be helpful to small businesses and how exemptions may sometimes have a negative impact. For instance, there are negatives to getting a registration permit, because it does not outline everything you have to do to be in compliance as do other permits. Another issue is figuring out how to hold construction permit requirements if an operation permit is not required.

Shane asked how this rulemaking fits with federal rules. Kristin responded that the state has more flexibility with non-Title V permits and minor sources than with other permits. They will try to align state rules with the federal requirements.

Amy asked if any of the current exemptions will be going away. Kristin responded that they would not but they may change or expand existing exemptions. Amy mentioned that some sources may determine they are exempt and not think about it again, so they need to be notified if a change is coming. Kristin said any changes would be toward simplification, making new exemptions, etc. They will not be getting rid of exemptions. Al noted that this should be made clear to exemption holders.

Action Item: An update will be provided on the progress of this rule at the next meeting.

Total Coliform Rule (DG-15-13) Overview – Steve Elmore

Steve presented a PowerPoint on the Total Coliform Rule (TCR).

The Total Coliform Rule has been in existence since 1989 and was revised on February 13, 2013. DNR will be delivering a package to EPA on implementation which includes more frequent testing, formal assessments, and the correction of sanitary defects. The revised rule will go into effect on April 1, 2016.

Al clarified that the federal rule, the Safe Drinking Water Act, changed, so the state has to comply and change its rule. Steve agreed, explaining that the state takes the federal regulation and drafts a package outlining how to implement it. Amy asked if the state was changing the rule because EPA says they have to. Steve said yes, but the state still has some flexibility.

Steve outlined the changes between the current TCR and the revised rule. The current regulation requires boil orders and public notices when total coliform positive samples are taken. However, the revised rule will only require boil orders and notices when E. coli is detected. When E. coli is detected, an assessment of the system will be required to find out why it occurred and the sanitary defects will have to be corrected. If corrective action is not taken, public notice and increased monitoring will be required and annual inspections or assessments may be required. The revised rule will also include state approved start up procedures and additional monitoring for seasonal systems such as campgrounds.

Al discussed the current rule's impact on small businesses. If a small business detects total coliform, they have to boil their water and they have to put out a public notice. The intent is to protect public health, but in some cases, this may be overreacting.

Shane asked if this rule applied only to municipal systems or whether private water sources were also affected. Steve explained that businesses such as taverns and rural daycares would be affected by this rule. If a source serves at least 25 people, they are considered a "public water system". The rule changes will not really affect large water systems, because they test multiple times a day anyway and are able to chlorinate their systems. Therefore, this will not be a big change. The assessment requirement just formalizes what a good system is already doing.

Richard asked about the different kinds of water sources. There are municipal systems and then there are small systems that are transient (serving 25+ people per day with a changing population, e.g. campgrounds) or non-transient (serving 25+ people per day with an unchanging population, e.g. day care centers).

The discussion then turned to private wells. Some of these businesses can connect to municipal water systems if there is an issue, but some are out in the middle of nowhere. Richard noted that there are many private wells even in the city. Steve responded that some cities have ordinances against having private wells. Al also clarified that this rule applies to potable water supplies only and not to industrial users.

As far as small business impacts go, there is an \$18 fee for a sample to be taken. However, samples are taken by a county sanitarian and the cost is covered. If issues are found, they might have to sample monthly, which would bring the cost up to \$216 per year. All recommended that the council encourage the legislature to continue allowing the government to cover the cost of sampling. Steve also noted that it would be difficult to train tavern operators or other small business owners to take their own samples and the new rule increases the complexity of the sampling requirement. Different entities will have to sample at different frequencies, which may lead to confusion for small businesses.

Shane did not think having to pay \$18 would be a problem for business owners but wondered what help would be available if a problem is found. Steve said the requirement for an assessment will only be required when E. coli is detected in the new rule. Total coliform may or may not trigger an assessment, depending on negotiations with EPA regarding implementing the new rule. DNR does the assessments.

Lisa asked if businesses pay the DNR for doing an assessment. Steve thought probably not.

Amy asked, if the council drafts a letter encouraging the legislature to keep covering the cost of sampling, when the letter should go out. All suggested that a letter be sent after the proposed rule has been sent to the legislature.

Shane asked if there is any way EPA might get involved with a small business. Steve said they were trying to avoid that. They have delegated cases to EPA in the past but have hired additional

staff to get away from having to do that. Al said EPA almost never comes to the state to inspect small businesses and instead focuses on large businesses.

Steve then discussed possible alternatives that could be included in the revised rule. An option is to require less frequent monitoring but more aggressive follow up if problems are discovered. They could decide to continue the requirement to boil water if total coliform is detected, or they could require less frequent monitoring but take larger volume samples, which would provide more information but would also be more expensive.

Steve then went over the timeline. They are going to begin meeting with stakeholders starting in September. Amy recommended this include discussions with township associations that know the local people and businesses. The rule changes will take effect on April 1, 2016.

Amy asked if this rule would affect farming. Steve said this will not affect farms unless they have 25 or more employees.

Steve recommended council members subscribe to a GovDelivery list if they would like to receive updates on this rule change. To subscribe, search for "drinking water" on DNR's website http://dnr.wi.gov. The page that comes up will have a link that says "subscribe".

Al noted that this rule has the least amount of flexibility of the three examined at this meeting. The Construction and Operation Permit Program Requirements rule changes have a medium amount of flexibility, and the changes to Wisconsin's Endangered/Threatened Species List has a lot of flexibility.

<u>Changes to Wisconsin's Endangered/Threatened Species List (ER-27-11) Overview – Erin</u> Crain

Erin Crain gave an overview of proposed changes to the state's Endangered and Threatened Species List. A handout was provided.

Erin explained that DNR has two endangered species rules. ER 29 outlines the regulations on protecting listed species and ER 27 lists which species are protected. Wisconsin was one of the first states to adopt an endangered species law in 1972. There have been ten comprehensive revisions. Single listing and delisting occurs outside the comprehensive revisions as well.

The rule requires an endangered resources review when obtaining a DNR permit, grant or plan approval for a project that may disrupt a listed species. If a review is done beforehand, the permitting process will go more quickly. If DNR does the review, it can cost between \$75 and \$300. For about two thirds of reviews, there is no potential impact. For most sites with a potential impact, measures can be taken to minimize the impact. For the few that cannot avoid an impact, an incidental take permit will be required, but this only amounts to around 20 projects per year. Public notification is required for incidental take permits. For some sites, a broad incidental take permit is available which covers activities that are widespread, such as bat removal. Large businesses with environmental staff can get certified to do their own reviews, making turnaround time quicker.

The proposed rule change is about changes to the list itself and opportunities for input will be provided. There is a need for increased representation in the stakeholder group. Right now it consists of 30-40 organizations. They do not have a small business representative. The group meets quarterly in Madison for about 3 hours.

Erin explained that they are also working on creating alternative avoidance measures. For instance, if a project will impact an endangered turtle, you can put up fencing and remove the turtles from the area, but this will only benefit a few turtles that are present. Alternative options include putting up turtle crossing signs, underpasses, etc. which would protect more turtles and cost less to implement. Erin explained that the rule makers don't have the background to come up with alternatives, so they are looking for suggestions from stakeholders. They also have a safe harbor program. If you have endangered species on your property and you manage for them, you can receive regulatory relief and get incidental take permits. This encourages landowners to not get rid of habitat that could attract endangered species.

Amy asked if they have received comments from small businesses on the proposed listing/delisting. Erin said the vast majority of comments have been from people not wanting the Blanding's turtle to come off the list. Al said that most business interaction is with small utility companies and some larger ones, but they don't receive much input from the development sector on endangered species listing.

Al stated that a lot of progress has been made on ER rules. These rules used to be a critical barrier to development, but they have brought more common sense to the program and now remove species that no longer need protection.

Richard asked where the agency gets data on species. Erin said they get data from the natural heritage inventory performed by DNR staff, as well as universities and individuals. As part of the requirements for listing a species, it has to be breeding in the state.

Shane pointed out that links to this rule on the Wisconsin State Government portal are not working.

Action Item: Al will follow up on broken links.

Kimberly asked if small businesses that don't usually require permits would also need to go through the review process. Erin answered yes, small businesses are accountable but don't always know it. She is working with local zoning officials that regularly interact with small businesses to provide them the necessary information.

Feedback on Rules Review Process - members

Action Item: If members have any questions or comments on any of the rules discussed, please send them to Lisa by close of business on Friday, August 9th.

Al explained that the rules reviewed at this meeting were very different types of rules at different points in the rule making process and asked the council if this review was useful.

- Richard said yes, although the endangered resources rule was pretty far along and wasn't too controversial.
- Amy also thought the process was useful but that the number of rules to review should be
 decreased. She also noted that, from her initial review, she didn't think the coliform rule
 would impact small businesses. She would like it if DNR could provide the members
 with some idea of the potential impact.
- Shane mentioned the need for better interaction between agencies such as EPA and DNR. It is good when they can both tie a rule together. Al said the current government is trying to do that, since dual regulation can be problematic for businesses.

Al stated that more rules will be screened out in the future. Lisa explained that more rules were provided this time so members could get a general idea of what rules were being proposed. In the future, rules without small business impact and those far along in the process will not be sent to members. Lisa also noted that the scope statements include a section on small business impacts.

Since members agreed that the review process had been helpful, the council will continue to follow this format.

Office of Business Support and Sustainability (OBSS) Functional Alignment – Al Shea and Kimberly Ake

Al distributed a handout showing the organizational structure of the OBSS. The office has four chief functions: business support, sustainability and performance-based programs, infrastructure support and environmental analysis.

The sustainability and performance-based programs have a limited capacity, and more could be done in this area. Green Tier falls here, but isn't suitable for every business. There is a need for other options. Most small and medium sized businesses are looking for opportunities to be more sustainable, because the market demands it. Al feels the office needs to increase its capacity for technical support in this area.

The infrastructure support section is well staffed. This section works with utilities, transmission companies and the Department of Transportation. There are specialized staff members to help these organizations obtain permits.

The environmental analysis section was discussed at the previous meeting when David Siebert presented on the proposed changes to NR 150. As a result of the rule changes, this section is shifting its focus from looking at one project at a time to looking at issues more generally.

Kimberly took over to discuss the different components of business support. There are two components of small business support. The first is compliance assistance, which consists of the Small Business Clean Air Assistance Program. Right now this program focuses on air

management issues but will be expanded to include waste and water later in the year. The second component of the small business support is the Small Business Environmental Council.

Kimberly noted the need for small business assistance to focus on sustainability and performance-based programs. Many small businesses are doing great things in this area, but participation in Green Tier may be too costly. OBSS needs a program that recognized small businesses. Possibilities include using the Green Masters format; however, this format ranks businesses, which might not be ideal. Kimberly also mentioned the possibility of using Environmental Results Programs (ERPs) to help small business sectors with compliance.

Al pointed out that there are a lot of programs outside DNR that are available to help small businesses with their sustainability needs, each with different expertise and niches. OBSS should be a connector between businesses and other groups. Kimberly also expressed the need to make it easier for businesses to go above and beyond compliance by providing regulatory flexibility. Shane mentioned the need for small businesses to see a lifecycle analysis to better understand what their best choices are. For instance, replacing a machine is expensive, but a business should also consider the increased energy efficiency and other benefits. The Small Business Program needs to be more proactive in getting that information out. Shane also said the program should work on getting different groups that can help small businesses together so businesses can learn what they do. For example, businesses may not know that they can get a free energy assessment from Focus on Energy. The council discussed the possibility of having an event that could bring such groups together to interact with small business owners. Al thought it would be beneficial to do this at an already existing event.

Adjourn – The next meeting will be on Thursday, October 17th 9:00-12:00 in Madison.